REMARKS/ARGUMENTS

The Pending Claims

Claims 47-50, 52-54, 56, 58, and 59 are pending.

Amendments to the Claims

Claim 48 has been amended to clarify the claim language. Claim 53 has been amended to clarify that the kit comprises a CEA agonist peptide, a vector comprising a gene encoding CEA, and an immunostimulatory molecule, as supported by the specification at, for example, paragraph 0020. No new matter has been added by way of these amendments to the claims.

Summary of the Office Action

The Office rejects claims 52, 58, and 59 under 35 U.S.C. § 112, first paragraph, for allegedly containing new matter.

The Office rejects claim 53 under 35 U.S.C. § 112, second paragraph, as allegedly indefinite.

The Office rejects claims 52, 58, and 59 under 35 U.S.C. § 102(b) as allegedly anticipated by WO 00/34494. The Office rejects claims 52, 58, and 59 under 35 U.S.C. § 102(e) as allegedly anticipated by (i) U.S. Patent Application Publication No. 2004/0019195 or (ii) U.S. Patent 6,969,609.

The Office rejects claims 47-49, 58, and 59 on the grounds of nonstatutory obviousness-type double patenting as allegedly unpatentable over claims 10, 18, 19, 26, and 27 of U.S. Patent 7,211,432 ("the '432 patent"). The Office also rejects claims 50, 52, 54, and 56 on the grounds of nonstatutory obviousness-type double patenting as allegedly unpatentable over claims 10, 18, 19, 26, and 27 of the '432 patent and further in view of U.S. Patent 6,319,496 and WO 91/02805.

Reconsideration of these rejections is hereby requested.

Discussion of New Matter Rejection

The Office contends that claims 52, 58, and 59 contain subject matter that was not described in the specification at the time the application was filed. Applicants traverse this rejection for the following reasons.

As discussed in the previous Reply to Office Action, one of ordinary skill in the art, upon reading the specification, would understand that the kits and compositions described therein can contain a nucleic acid molecule encoding an agonist peptide, as well as a vector comprising the nucleic acid molecule. The specification describes kits and compositions comprising the agonist peptide (see, e.g., paragraphs 0020-0023 of U.S. Patent Application Publication 2004/0171796). The specification also describes a nucleic acid molecule encoding the agonist peptide, as well as vectors comprising the nucleic acid molecule (see, e.g., paragraphs 0065-0073 of U.S. Patent Application Publication 2004/0171796). Therefore, one of ordinary skill in the art would recognize that the agonist peptide of the inventive kits and compositions can be substituted by a nucleic acid molecule encoding the agonist peptide, as well as a vector comprising the nucleic acid molecule, such that the inventive kits and compositions comprise a nucleic acid or vector.

For these reasons, the subject matter of claims 52, 58, and 59 was described in the originally filed specification. Accordingly, the new matter rejection of claims 52, 58, and 59 is improper and should be withdrawn.

Discussion of the Indefiniteness Rejection

The Office contends that it is unclear from claim 53 whether or not the vector comprises the immunostimulatory molecule. Claim 53 has been amended to clarify that kit comprises a CEA agonist peptide, a vector comprising a gene encoding CEA, and an immunostimulatory molecule, wherein the immunostimulatory molecule is selected from a particular group. Applicants believe claim 53, as amended, is sufficiently clear and request that the indefiniteness rejection be withdrawn.

Discussion of the Anticipation Rejections

As discussed above in connection with the new matter rejection, claims 52, 58, and 59 are fully supported by the present application. Since the disclosure of the present application in that respect is the same as the disclosure of the earliest priority application, claims 52, 58, and 59 are entitled to an effective filing date corresponding to the filing date of the earliest priority application. As a result, the cited references are not prior art to claims 52, 58, and 59, and the anticipation rejection is improper and should be withdrawn.

Discussion of the Obviousness-type Double Patenting Rejections

The Office contends that claims 47-50, 52, 54, 56, 58, and 59 are unpatentable over the claims of the '432 patent, alone or in combination with other references.

In order to expedite the prosecution of the application, a terminal disclaimer is filed herewith rendering the obviousness-type double-patenting rejection moot. The filing of the terminal disclaimer is in no way an admission of obviousness as between the subject matter of the present claims and the claims of the '432 patent.

Conclusion

Applicants respectfully submit that the patent application is in condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

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